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STONEBRIDGE LIFE INSURANCE COMPANY

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TERRI SMITH and MICHELE
SMITH FREGOSO,

Plaintiffs,

vs.

STONEBRIDGE LIFE
INSURANCE COMPANY,

Defendant.

Case No. C 08-01466 JCS

Magistrate Judge Joseph C. Spero

DECLARATION OF JOSEPH E.
LASKA IN SUPPORT OF
DEFENDANT STONEBRIDGE LIFE
INSURANCE COMPANY'S
OPPOSITION TO PLAINTIFFS'
PARTIAL SUMMARY JUDGMENT
ON PLAINTIFFS' FIRST CAUSE OF
ACTION FOR BREACH OF
CONTRACT

[Filed concurrently with:
(1) Opposition to Plaintiffs' Motion for
Partial Summary Judgment;
(2) Declaration of Cheryl Penner;
(3) Evidentiary Objections to
Declaration of Michele Smith Fregoso;
and
(4) Evidentiary Objections to
Declaration of John Stennett.]

Hearing Date: September 26, 2008
Hearing Time: 9:30 a.m.
Courtroom: A

Action Filed: September 5, 2007

DECLARATION OF JOSEPH E. LASKA

I, Joseph E. Laska, declare as follows:


1. I am an attorney licensed to practice before the courts of the State of California and this Court. I am an associate with the law firm of Manatt, Phelps & Phillips, LLP, counsel for Defendant Stonebridge Life Insurance Company ("Stonebridge") in this action. I have personal knowledge of the facts set forth in this declaration, except those matters stated on information and belief, which I believe to be true. If called as a witness, I can and will testify competently to all of those facts.

2. Attached as **Exhibit 1** are true and correct copies of excerpts from the transcript of the deposition of Dr. Chia Chen, taken on April 11, 2008.

3. Attached as **Exhibit 2** are true and correct copies of excerpts from the transcript of the deposition of Humboldt County Deputy Coroner Roy Horton, taken on April 11, 2008.

4. On August 14, 2008, I spoke with Plaintiffs' counsel John Stennett by telephone. I informed him that Plaintiffs' Motion for Partial Summary Judgment had not been filed by the August 13, 2008 deadline agreed by the parties and ordered by the Court. I did not receive service of Plaintiffs' Motion and supporting declarations through the Court's e-filing system until August 15, 2008.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed by me on August 29, 2008 in Los Angeles, California.



Joseph E. Laska

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
CASE NO. C 08-01466 JCS

TERRI SMITH and MICHELLE
SMITH FREGOSO,

Plaintiffs,

vs.

STONEBRIDGE LIFE INSURANCE
COMPANY,

Defendants.

DEPOSITION

OF

CHIA CHEN, M.D.

FRIDAY, APRIL 11, 2008

8:15 A.M.

VALERIE WALKER, CSR #7209

CRNICH DEPOSITIONS
626 H STREET, EUREKA, CA. 95501
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A P P E A R A N C E S

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(Appearing telephonically)

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I N D E X

EXAMINATIONPAGE

By Mr. Laska

5, 72

By Mr. Stennett

66, 74

EXHIBITSDESCRIPTIONPAGE

A

Medical records

21

B

April 9, 2007 notes

52

C

Death certificate

61

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 CASE NO. C 08-01466 JCS
4
5

6 TERRI SMITH and MICHELLE
7 SMITH FREGOSO,

8 Plaintiff,

9 vs.

10 STONEBRIDGE LIFE INSURANCE
11 COMPANY,

12 Defendants.
13 _____/

14 Be it remembered that pursuant to notice, and on
15 Friday, April 11, 2008, commencing at the hour of
16 8:15 a.m. thereof, at the office of Redwood Family
17 Practice, 2350 Buhne Street, Eureka, California, before
18 me, Valerie Walker, Certified Shorthand Reporter Number
19 7209 for the State of California, personally appeared

20 CHIA CHEN, M.D.,

21 a witness in the above-entitled action, called by the
22 Defendant, who, after having been duly sworn to testify
23 to the truth, the whole truth and nothing but the truth,
24 was interrogated and examined in said cause.
25

1 EUREKA, CALIFORNIA; FRIDAY, APRIL 11, 2008

2 8:15 A.M.

3
4
5 CHIA CHEN, M.D.,

6 having been duly sworn, testified as follows:

7
8 EXAMINATION

9 BY MR. LASKA:

10 Q. Good morning, Dr. Chen.

11 A. Good morning.

12 Q. Could you please state your name for the record?

13 A. Chia Chen.

14 Q. Have you ever been known by any other names?

15 A. No.

16 Q. Okay. Do you have a maiden name?

17 A. I have a middle name, L-I-N.

18 Q. L-I-N?

19 A. Yes.

20 Q. As I said, I introduced myself earlier, but for
21 the record, Joe Laska. I'm an attorney, and I represent
22 Stonebridge Life Insurance Company in connection with
23 the litigation that was filled by Terri Smith and
24 Michelle Smith Fregoso, who were daughters of Diane
25 Geraldine Hall-Hussain, who I understand was your former

1 another office and decided to come back here.

2 Q. What was the name of the previous physician from
3 this office that she had seen?

4 A. I believe -- I don't have a name here on my
5 record, but I believe it was Eureka Internal Medicine,
6 although she had several because of all the specialists
7 she'd been going to, so I'm not surprised that I didn't
8 write that particular physician down. But on my records
9 it was Dr. Albertini, A-L-B-E-R-T-I-N-I, who was the
10 urologist, kidney specialist. But you could say that
11 was the last one she saw.

12 Dr. Albertini was a doctor she saw here, not in
13 this office, in this town.

14 Q. Okay. I see. Sorry. I may have misunderstood.
15 I believe you testified she continued her treatment with
16 a different doctor here in this office?

17 A. Right. In 1999 she saw a different physician, a
18 primary physician, and she was not seen in our office
19 until I saw her in 2004. So between those times she had
20 seen other physicians, including other primary
21 physicians and specialists.

22 Q. What was the name of the primary physician from
23 this office that she saw in 1999?

24 A. That was Dr. Newman, N-E-W-M-A-N.

25 Q. Were you Ms. Hall-Hussain's primary physician

1 from July 7th, 2004 --

2 A. Yes.

3 Q. -- through the time of her death?

4 A. Yes.

5 Q. To your knowledge, did Ms. Hall-Hussain see any
6 other doctors during that period?

7 A. Yes, specialists and also any doctor that might
8 have consulted while she was hospitalized, but I don't
9 believe she's seen any other primary doctors.

10 Q. Do you know Dr. Ann Lindsay?

11 A. Yes.

12 Q. Do you know if Ms. Hall-Hussain was a patient of
13 Dr. Lindsay's?

14 A. Not from this record in front of me, but I could
15 search through it more, if you like. She might. She's
16 been in this area for a while so she might have seen
17 other physicians in the area that I'm not aware of.

18 Q. Dr. Lindsay doesn't work in this office, correct?

19 A. No.

20 Q. But have you no personal knowledge of
21 Ms. Hall-Hussain seeing Dr. Lindsay?

22 A. That could be the doctor she'd seen before. I
23 recall she said that she was fired by another physician,
24 and that might be -- it was -- or maybe she fired her.

25 But anyway, so she was on a medication called

1 A. Yes.

2 Q. Do you remember the first time that you
3 prescribed it for her?

4 A. No, I don't remember the dates.

5 Q. We can walk through the records and try to figure
6 that out. But what was the reason that you prescribed
7 the oxycodone for Ms. Hall-Hussain?

8 A. For intractable pain.

9 Q. And you prescribed the OxyContin to treat the
10 intractable pain?

11 A. Right. I have the date if you like, April 21st,
12 2005.

13 Q. To keep the record clean, why don't we look at
14 the stack of documents that I gave to you, and I'll
15 point out where I believe that is. If you would notice
16 at the bottom of each page there's a number that says
17 SLIC, and if you could turn to the page that is 129.

18 A. Okay.

19 Q. Is that the record that you were looking at in
20 your file?

21 A. Yes.

22 Q. And based on this record, it's your recollection
23 that you first prescribed OxyContin for Ms. Hall-Hussain
24 on April 21st, 2005?

25 A. Yes.

1 her to oral morphine.

2 Q. What is a Duragesic patch?

3 A. A Duragesic patch is a narcotic pain medication
4 that is taken not by mouth but through a patch that you
5 place on the skin, and the patch is stuck to the skin
6 for, could be three days in a row, and the medication is
7 released slowly and absorbed by the skin.

8 Q. And you're testifying, based on your notes, that
9 you had switched Ms. Hall-Hussain from the patch to oral
10 morphine?

11 A. Yes.

12 Q. Do you recall the reason for the change?

13 A. Let's see if I can see from this. It's either
14 she did not tolerate the adhesive or that the patch is
15 not working. And from my notes down at the bottom, it
16 looks like I had written for her to increase the patch.
17 So it might be that she complained that the patch is not
18 working for her pain. So I thought oral morphine might
19 be different in which she might adjust the dose more
20 easily, so we wanted to give her a trial of the MS
21 Contin.

22 Q. And ultimately you, based on your testimony, on
23 April 21st ended up prescribing OxyContin for her?

24 A. Right.

25 Q. You testified OxyContin is a narcotic painkiller?

1 A. Yes.

2 Q. So is it safe to say there are certain risks
3 associated with taking the drug?

4 A. Yes. With all three that I mentioned, they are
5 narcotic painkillers, and there are risks for taking all
6 those.

7 Q. What are some of the risks?

8 A. You could be overly sedated. You could have the
9 known side effects of any medication. You could have
10 adverse reactions. You could overdose on the
11 medication, if you weren't careful, or if you combine
12 with other central nervous system stimulants or
13 depressants, they could enhance the effect of the
14 medication.

15 Q. Can you give me examples of some central nervous
16 system depressants?

17 A. Could be -- alcohol is very common, or other
18 medications, or any illegal or legal medications.

19 Q. So, for example, if a patient consumed alcohol
20 while taking OxyContin, that could increase the sedative
21 effects?

22 A. Correct.

23 Q. And increase the risk of overdose?

24 A. Yes.

25 Q. Did you describe or discuss any of these risks

1 with Ms. Hall-Hussain at the time that you prescribed
2 the OxyContin?

3 A. Yes. I make it a normal practice every time
4 there's a new medication prescribed, we always --
5 especially a narcotic or a central nervous system
6 medication that could affect the nervous system, we
7 always would use that precaution: Do not use alcohol or
8 any similar medication without my okay.

9 Q. And did you similarly describe the risk of
10 overdose to Ms. Hall-Hussain, to the best of your
11 recollection?

12 A. At some point I have talked to her about -- the
13 reason that we write the doses down precisely and give
14 precise numbers and control the way we write the
15 prescription -- at that time I believe it was triplicate
16 prescription forms -- is for that very purpose. The
17 fact that it's treated differently than a regular
18 medication, say an antibiotic is, because of all these
19 inherent risks. So I believe she came to me, could be
20 already on -- yes, she was already on medication,
21 narcotics. She had experience with narcotics medication
22 before.

23 So it may not be that every time I see her --
24 every time I mention a narcotic I would go over the
25 entire risk profile again, but I'm sure it has been

1 mentioned. And I'm sure the sense that this is a
2 controlled substance that we have to use it very
3 carefully has been described to her.

4 Q. So it's fair to say that you would have discussed
5 that with her at some point from April 21st on?

6 A. From the first time I've seen her.

7 Q. And you testified that she was on -- she had
8 previous experience with narcotics; is that what you
9 said?

10 A. I believe she has, yeah.

11 Q. Are you basing that belief on -- do you have an
12 independent recollection of that, or are you basing that
13 on some notations in your records?

14 A. I think I have old records I can look at.

15 Well, she had already been on Neurontin even back
16 in 1999 when she saw Dr. Newman. So that is a chronic
17 pain medication that we tend to use for people with
18 chronic pain.

19 Q. And the name of that drug was Neurontin?

20 A. Yes. And she was on Tylenol No. 3. This was
21 back in 1999. So she had already had experience with
22 narcotic medications even when she was seen back in 1999
23 by another doctor here.

24 Q. And nevertheless, at the time that you prescribed
25 the OxyContin to Ms. Hall-Hussain it would have been

1 your practice to discuss the possible dangers of the
2 drug and the possible side effects?

3 A. Yes.

4 Q. Do you have any recollection of whether
5 Ms. Hall-Hussain indicated to you an understanding of
6 what you discussed of the risks of taking the drug?

7 A. Yes.

8 Q. You do have a recollection of that?

9 A. Yes.

10 Q. Can you describe to me what it is that you recall
11 exactly? Was it an in-person discussion that you had?
12 Was it during this telephone call?

13 A. It wasn't during the telephone call because if we
14 expressly talked about that, I would have written it
15 down. It's probably some other visit, a face-to-face
16 visit that we've had, or hospital visit that we had.
17 And when we talked about pain medication -- or pain
18 control, pain management, and when changes or increases
19 come up, that's when we would discuss it.

20 Q. So you don't recall exactly the date of this
21 conversation or when it was during your treatment of
22 her?

23 A. No. Because it would be numerous times.

24 Q. So you do have an independent recollection or
25 independent recollections of discussing these risks with

1 Ms. Hall-Hussain and of her communicating to you that
2 she understood the risks?

3 A. Yes.

4 Q. Do you have any recollection of instructing
5 Ms. Hall-Hussain not to increase the dosage of the
6 medicine without your consent?

7 A. Yes.

8 Q. For instance, you would tell her that she
9 shouldn't just -- if she's feeling in pain she shouldn't
10 just take more of the medicine without first consulting
11 with you?

12 A. If I wanted her to independently titrate the
13 medication, I would tell her so, and I would give her an
14 upper limit. And the upper limit would be implicit in
15 my prescription itself, and also the number of pills and
16 the amount of time I expect the pills to last. And
17 that's always the case for any narcotic medication with
18 anyone.

19 Q. So I want to make sure I understand your
20 testimony then. Your testimony is that the prescription
21 you wrote would be the upper limit of what you were
22 instructing her to take?

23 A. Yes.

24 Q. With the understanding that she could always take
25 less medicine if she --

1 A. Don't need them.

2 Q. Right. But that she was not supposed to take
3 more medicine than you had prescribed?

4 A. Correct.

5 Q. And you have recollections of talking with
6 Ms. Hall-Hussain about this?

7 A. Yes.

8 Q. And of her indicating to you that she understood
9 it?

10 A. Yes.

11 Q. Let's go back to page 129. I just want to walk
12 through the dosages here. Under the April 21st entry,
13 there's an entry that appears to be dated May 24th,
14 2005. Please tell me if I'm not reading this correctly.
15 This seems to indicate to me that you've increased the
16 dosage of OxyContin 40 milligrams to two pills two times
17 a day?

18 A. Yes.

19 Q. And you increased the number of pills to 120?

20 A. Yes.

21 Q. And that was because two pills twice a day is
22 four pills a day?

23 A. Correct.

24 Q. Times 30 days is 120?

25 A. Yes.

1 appears to be a note from November 3rd, 2006?

2 A. Yes.

3 Q. At the bottom it seems to indicate that
4 Ms. Hall-Hussain is -- or was still instructed to take
5 40 milligrams of OxyContin, two pills three times a day?

6 A. Yes.

7 Q. So that was the same dosage as last time?

8 A. Yes.

9 Q. And it was not an increase?

10 A. Yes.

11 Q. Okay. Let me ask you -- we have, based on the
12 notes that we've looked at, seems like Ms. Hall-Hussain
13 was on OxyContin from April 2005, starting in April
14 2005?

15 A. Yes.

16 Q. To your knowledge, was she taking OxyContin from
17 April 2005 up through the time of her death?

18 A. Yes. It should be.

19 Q. I mean, you don't have any recollection that she
20 had stopped taking it at any point and then started
21 taking it again?

22 A. I would have to look through the records to see
23 if she told me she stopped and started. If the refill
24 record shows that every month we've been refilling it,
25 then I'd have to assume she was taking it or she

1 wouldn't be filing for a refill.

2 Q. Let's discuss that process.

3 The number of pills that you prescribed for
4 Ms. Hall-Hussain was intended to last 30 days?

5 A. Yes.

6 Q. So one month supply?

7 A. Yes.

8 Q. So did she refill her prescription every month?

9 A. I can look and tell you. Do you want me to look
10 and tell you?

11 Q. Yes, please. And I think the notes you're
12 looking for are probably at 134, and there's some
13 additional notes on 135 and 136.

14 A. So it looks like it's very close to monthly, yes,
15 because you can see every month, April, May, June, July,
16 August, so forth.

17 Q. How did that work logistically? Did Ms. Hall
18 have to come in every month personally for the
19 prescription? Was it something that you were able to
20 telephone into the pharmacy?

21 A. Yeah. The way we do it is, if a person has had a
22 long experience with the medication, I feel that they
23 are -- they don't need to come in every month. They can
24 come in every three months. Or if I feel that they do
25 need to come in every month, I will make them come in

1 A. Exactly.

2 Q. Because of all the dangers involved?

3 A. Yes.

4 Q. And the next time you prescribed the medication
5 was March 26?

6 A. Yes.

7 Q. If I could direct your attention to page 112, to
8 the second to last page from the top. Is this your
9 handwriting?

10 A. No. This is a student, a nursing -- well, a
11 nurse practitioner student.

12 MR. STENNETT: When you say "this," are you
13 referring to the Post-it note?

14 MR. LASKA: I'm sorry. We're looking at
15 112, and it's just a whole sheet of notes. And I was
16 referring to the handwriting in general.

17 MR. STENNETT: Okay.

18 BY MR. LASKA:

19 Q. It appears to be dated April 3rd, 2007?

20 A. Yes.

21 Q. The middle of the page, based on what we
22 discussed earlier, it appears to indicate that you
23 increased the dosage of OxyContin to 40 milligrams three
24 tabs three times per day?

25 A. Yes.

1 Q. And the number next to that is 270?

2 A. Yes.

3 Q. And that's because three tabs three times a day
4 is nine tabs per day times 30 days is 270?

5 A. Uh-huh. Yes.

6 Q. So based on these notes, it's your recollection
7 that this is accurate in that on April 3rd you increased
8 the dosage of Ms. Hall-Hussain's OxyContin?

9 A. Yes.

10 Q. Do you have any independent recollection of this
11 office visit?

12 A. Yes.

13 Q. Do you remember why it was that you increased the
14 dosage at that time?

15 A. It's because she complained of more pain, and her
16 pain is not being controlled by what she's on. And she
17 might have expressed to me that -- she stopped the
18 existing medications she had or she could have lost it
19 because she had traveled or she don't have it anymore
20 for any reason, somebody could have taken it from them.
21 There's all kinds of reasons that she may not have
22 enough medication. And this is only a part of that day.

23 And what I recall is that she also developed some
24 sores and foot problems that may give her additional
25 pain that was not her usual pain amount. There's other

1 Have you ever reviewed the coroner's report?

2 A. No.

3 Q. That's not something you would have in your file?

4 A. Well, they do send one to me, but I don't
5 remember seeing it.

6 Q. You don't remember reviewing it?

7 A. No.

8 Q. To your knowledge, have you ever reviewed the
9 toxicology report that was performed on
10 Ms. Hall-Hussain's blood when she was found dead?

11 A. No. It probably would be connected to the
12 coroner's report. I think I would remember it if I saw
13 it.

14 Q. To your knowledge, have you ever seen
15 Ms. Hall-Hussain's death certificate?

16 A. I actually might be the one filling it out
17 because it would come to me. So I must have seen it.

18 Q. It would come to you as her treating physician?

19 A. Yeah. I believe they would send it to me even if
20 I wasn't attending to the patient at the time of her
21 death. So I may very well have filled it out. But in
22 the case that goes to coroner, if the cause of death is
23 unclear, that they may not have sent it to me as I
24 usually would get them. So I may not be the one that
25 filled it out. Because the coroner's case might be

1 different than straightforward.

2 Q. Okay. I'm going to show that to you in a minute.

3 But before we do that I want to close the loop on this
4 extra page that you copied.

5 And just for the record, we copied a page of
6 notes that appears to be dated April 3rd, 2007. The
7 first part of the entry reads, it looks like, "Left foot
8 getting worse." And it appears to also be notes taken
9 by Ms. Myers, the nursing student.

10 And it's your testimony that this is the first
11 page of Exhibit 112?

12 A. Yes.

13 Q. So these two pages are meant to be one continuous
14 note?

15 A. Yes.

16 Q. Okay. We've introduced this as Exhibit B, then,
17 to the record.

18 And a few lines in, Dr. Chen, it reads, "She
19 feels depressed because of pain and doesn't want to
20 bother" -- and what's the rest?

21 A. "With blood sugars, BG, blood glucose."

22 Q. If this notation is in these notes, is that
23 because Ms. Hall-Hussain told you that she was
24 depressed?

25 A. Yes.

1 Q. Did Ms. Hall-Hussain have a history of
2 depression?

3 A. Yes.

4 Q. Could you describe that more for me? Do you
5 remember, for instance, the first time that she
6 indicated to you that she was depressed?

7 A. I don't remember the first time, but I remember
8 in general that that has always been an issue. In fact,
9 it would be very strange to have someone who has chronic
10 pain and her medical problems not to be depressed. So
11 that wasn't surprising at all.

12 Q. Did you ever treat Ms. Hall-Hussain for her
13 depression?

14 A. Yes.

15 Q. What did you do to treat her for that?

16 A. Medications.

17 Q. Which medication?

18 A. The last thing I can recall is Cymbalta, and
19 there could be others that we tried.

20 Q. Do you have any recollection based on your
21 recollection or notes whether Ms. Hall-Hussain's
22 depression was getting better or getting worse, in
23 general?

24 A. In general there's fluctuations. Sometimes it
25 will be worse; sometimes it will be better. If I have

1 the transcript will be assumed to be correct as is and
2 an unsigned copy can be used for all purposes at trial
3 or any other instance in this matter.

4 MR. STENNETT: And that her signature be
5 under penalty of perjury.

6 MR. LASKA: Yes, of course.

7 MR. STENNETT: So stipulated.

8 MR. LASKA: All right. Talk to you in
9 awhile.

10 (The deposition was concluded at 10:05 a.m.)

11

12

13

14 I hereby certify under penalty of perjury that the
15 foregoing is true and correct.

16 Executed this ____ day of _____, 2008,

17 at _____.

18

19

20 CHIA CHEN, M.D.

21

22

23

24

25

1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF HUMBOLDT)

4 I, Valerie Walker, CSR No. 7209, a Certified
5 Shorthand Reporter of the State of California, hereby
6 certify that the witness in the foregoing deposition was
7 by me duly sworn to testify to the truth, the whole
8 truth and nothing but the truth in the within-entitled
9 cause; that said deposition was taken at the time and
10 place therein stated; that the testimony of the said
11 witness was reported by me and was thereafter
12 transcribed under my direction into typewriting; that
13 the foregoing is a full, complete and true record of
14 said testimony; and that the witness was given an
15 opportunity to read and correct said deposition and to
16 subscribe the same. Should the signature of the witness
17 not be affixed to the deposition, the witness shall not
18 have availed himself/herself of the opportunity to sign
19 or the signature has been waived.

20 I further certify that I am not of counsel or
21 attorney for either or any of the parties in the
22 foregoing deposition and caption named, or in any way
23 interested in the outcome of the cause named in said
24 caption.

25 Valerie Walker
Certified Shorthand Reporter

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CASE NO. C 08-01466 JCS

TERRI SMITH and MICHELLE
SMITH FREGOSO,

Plaintiffs,

vs.

STONEBRIDGE LIFE INSURANCE
COMPANY,

Defendants.

D E P O S I T I O N

O F

DEPUTY CORONER ROY HORTON

FRIDAY, APRIL 11, 2008

11:00 A.M.

VALERIE WALKER, CSR #7209

CRNICH DEPOSITIONS

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(Appearing telephonically)

FOR THE DEFENDANTS:

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I N D E X

EXAMINATIONPAGE

By Mr. Laska

5, 69

By Mr. Stennett

62

EXHIBITSDESCRIPTIONPAGE

A

Coroner's File

B

Death Investigation Report

20

C

Death Certificate

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 CASE NO. C 08-01466 JCS
4 . . .
5

6 TERRI SMITH and MICHELLE
7 SMITH FREGOSO,
8 Plaintiffs,
9 vs.

10 STONEBRIDGE LIFE INSURANCE
11 COMPANY,
12 Defendants.
-----/

13 Be it remembered that pursuant to notice, and on
14 Friday, April 11, 2008, commencing at the hour of
15 11:00 a.m. thereof, at the offices of Crnich
16 Depositions, Certified Shorthand Reporters, 626 H
17 Street, Eureka, California, before me, Valerie Walker,
18 Certified Shorthand Reporter Number 7209 for the State
19 of California, personally appeared

20 DEPUTY CORONER ROY HORTON,

21 a witness in the above-entitled action, called by the
22 Defendant, who, after having been duly sworn to testify
23 to the truth, the whole truth and nothing but the truth,
24 was interrogated and examined in said cause.
25

1 EUREKA, CALIFORNIA; FRIDAY, APRIL 11, 2008

2 11:00 A.M.

3
4
5 DEPUTY CORONER ROY HORTON,

6 having been duly sworn, testified as follows:

7
8 EXAMINATION

9 BY MR. LASKA:

10 Q. Good morning, Deputy.

11 A. Good morning.

12 Q. If you could state your name for the record,
13 please.

14 A. Roy W. Horton, H-O-R-T-O-N.

15 Q. What does the W stand for?

16 A. Wilbur.

17 Q. Is that W-I-L-B-U-R?

18 A. Yes.

19 Q. Have you ever been known by any other name?

20 A. No.

21 Q. We just met before we went on the record, but
22 again, my name is Joe Laska. I'm an attorney. I
23 represent Stonebridge Life Insurance Company in
24 connection with a lawsuit filed by the daughters of a
25 woman named Diane Geraldine Hall-Hussain. The lawsuit

1 A. Yes.

2 Q. Do you remember approximately how many
3 photographs you took of the scene?

4 A. Maybe a half a dozen, six, seven, maybe.

5 Q. And you had testified that you also saw an empty
6 pill bottle on the bed?

7 A. Yes.

8 Q. Is that the pill bottle that you brought along
9 with you today?

10 A. Yes.

11 MR. LASKA: Counsel, Mr. Horton also brought
12 with him from the evidence locker, the pill bottle for
13 OxyContin. And Mr. Horton, before getting on, called,
14 checked with his supervisor, and apparently is not
15 authorized to release it to be attached to the
16 deposition transcript. But I think what I'll do is
17 maybe have him read off the information from the label.

18 MR. STENNETT: Do you have a camera? You
19 can take a photograph.

20 MR. LASKA: I don't have a camera.

21 MR. STENNETT: Or just photocopy the label
22 or whatever.

23 MR. LASKA: It's on a round bottle, but
24 we'll try that. And we'll attach it as an exhibit to
25 the transcript.

1 Maybe I'll save time by reading it into the
2 record.

3 Q. Sir, it's a label from Lima's Professional
4 Pharmacy at 2097 Harrison Avenue, Eureka, California
5 95501. It gives the phone number for the pharmacy,
6 (707) 441-8500. Shows prescription Number N975022 for
7 Diane Hussain. "Take one to two tablets by mouth every
8 eight hours." It says, "Dr. Chia Chen, March 27, 2007."
9 It says, "180 OxyContin 40 milligram tabs. No refills.
10 Tablet round, yellow." And then there's a date that is
11 probably the expiration date, 10/08.

12 The pill bottle also contains a yellow label
13 along the side that contains a warning. Says, "May
14 cause drowsiness, period. Alcohol may intensify this
15 effect, period. Use care when operating a car or
16 dangerous machinery, period. May cause dizziness."

17 Is that accurate?

18 A. That's correct.

19 Q. And that was the pill bottle that you found lying
20 on the bed?

21 A. Yes.

22 Q. Were there any pills left in the bottle at the
23 time that you found it?

24 A. Not in the bottle.

25 Q. Did you see any pills at all in the area left?

1 A. Yes.

2 Q. Okay. And how many and where did you see those?

3 A. I saw one pill on the bed, and then pill bottles
4 on the night stand.

5 Q. And when you said you found one pill on the bed,
6 were you able to identify what type of pill that was?

7 A. Yes.

8 Q. And what type was it?

9 A. It was an OxyContin.

10 Q. How did you know it was an OxyContin? Are you
11 just familiar with that type of medication or did it say
12 OxyContin on it? How are you able to identify it?

13 A. No. Most the time they'll have a descriptive
14 number on them, and we have a book that we use to --
15 it's *Ident-A-Drug* book, and we run numbers on them to
16 confirm that that's what the pill is.

17 Q. Did you identify the pill at the scene? Did you
18 have the book with you, or do you do that back at your
19 office?

20 A. No, it was back at the office.

21 Q. So there was only one pill of that type lying on
22 the bed?

23 A. Yes.

24 Q. And you later confirmed that that was an
25 OxyContin pill?

1 A. Yes.

2 Q. Did you conduct a search of her bedroom for any
3 other OxyContin pills?

4 A. Yes.

5 Q. And did you find any?

6 A. No.

7 Q. You said that there was some other medications on
8 the bedstand?

9 A. Yes.

10 Q. Do you recall what other medications were there?

11 A. Again, I'll refer to my report.

12 Q. Okay.

13 A. SLIC 0071 is the Bates number. Forgive my
14 pronunciation.

15 Q. I don't make you pronounce it. In the third
16 paragraph on 0071, it says "Those medications included,"
17 and there's a list of several medicines. Those are the
18 medicines that you found?

19 A. Yes.

20 Q. And you took that down in your handwritten notes?

21 A. Yes.

22 Q. And then later put them directly into this
23 report?

24 A. Yes.

25 Q. And according to your report, you also found an

1 don't know what the cause of death is.

2 Q. So you're required to do an autopsy if you don't
3 have enough information?

4 A. Yes.

5 Q. And did you draw postmortem blood from
6 Ms. Hall-Hussain in this case?

7 A. Yes.

8 Q. And sent that to the lab?

9 A. Yes.

10 Q. Did you receive a report from the lab?

11 A. Yes.

12 Q. Now, is this the report that's attached to the
13 death investigation report?

14 A. Yes.

15 Q. And that is in the documents I gave you, numbers
16 73 and 74?

17 A. Correct.

18 Q. Is that the entire toxicology report, just two
19 pages?

20 A. Yes.

21 Q. How quickly did you get the results in this case,
22 if you recall?

23 A. We have two methods when we deal with labs --
24 with our lab, Central Valley Toxicology. We put a rush
25 on toxicology reports if it's going to be pending an

1 that number and draw conclusions from it?

2 A. Our point of reference is the blood reference
3 ranges, that's on page 73 here, SLIC 0073, they give a
4 reference to help us determine what's effective level
5 and what's potentially toxic levels.

6 Q. And according to this document, page 73, under
7 blood oxycodone it says, "Effective level .005-.05
8 milligrams per liter"?

9 A. Correct.

10 Q. And says, "Potentially toxic 0.2 milligrams per
11 liter"?

12 A. Correct.

13 Q. And based on your experience, that's meant to
14 indicate that the drug can be toxic at .2 milligrams per
15 liter?

16 A. Correct.

17 Q. And Ms. Hall-Hussain's blood level was above
18 that?

19 A. Correct.

20 Q. What conclusions did you draw from this
21 information, if at all?

22 A. I drew a conclusion that the -- I briefed coroner
23 Frank Jager on the case, and we concluded since that was
24 potentially toxic that that would be the cause of death.

25 Q. Did you at any point speak with

1 Ms. Hall-Hussain's physicians?

2 A. Yes.

3 Q. Which ones did you speak with?

4 A. I believe I spoke to Dr. Chen.

5 Q. Do you recall speaking with any other physicians?

6 A. No.

7 Q. Just Dr. Chen?

8 A. Yes.

9 Q. Do you recall when you spoke with Dr. Chen?

10 A. I believe it was when I was awaiting results for
11 the toxicology to come back.

12 Q. Is it fair to say it would have been within a
13 couple days after April 9th?

14 A. Yes.

15 Q. Did you contact Dr. Chen personally?

16 A. Yes.

17 Q. Did you speak with her on the phone?

18 A. Yes.

19 Q. And tell me about your conversation. What did
20 you say to her and what did she say to you in response?

21 A. I specifically asked her about the oxycodone, and
22 she stated that, you know, she had been prescribed
23 oxycodone, and that she had recently upped the dosage
24 because the previous amount didn't seem to be effective
25 anymore.

1 A. No.

2 Q. Did you ask Dr. Chen if she had any thoughts or
3 opinions or impressions about what might have caused
4 Ms. Hall-Hussain's death?

5 A. No.

6 Q. Did you tell Dr. Chen anything about your
7 thoughts or impressions?

8 A. I told her that she was over on her medication as
9 far as prescribed amounts for oxycodone.

10 Q. Do you recall what, if anything, Dr. Chen said to
11 you in response?

12 A. No.

13 Q. When did you finalize the death investigation
14 report? I'll represent that it appears to be dated May
15 1st of 2007. Is that when you finalized it, to the best
16 of your recollection?

17 A. Yes.

18 Q. Ultimately what was your conclusion about
19 Ms. Hall-Hussain's death and the nature and the causes
20 of it?

21 A. From the medication bottle I had and the
22 toxicology report, I concluded that the cause of death
23 was oxycodone intoxication.

24 Q. And let's look at document Number 72, SLIC 0072.
25 I'll read from the top. It says, "I signed the cause of

1 how much OxyContin is in her blood stream. Whether how
2 frequently she took those or when she took them or how
3 many she took, I don't know. All I depend on is the
4 level of the blood.

5 Q. Okay. How many conversations did you have with
6 Dr. Chen?

7 A. Just one.

8 Q. Just the one?

9 A. Yes.

10 Q. During your conversation with Dr. Chen, did you
11 discuss whether Ms. Hall-Hussain had been informed about
12 the risks of taking more OxyContin than was prescribed
13 by her physician?

14 A. No.

15 Q. Did Dr. Chen relate to you -- offer up any
16 information about any conversations like that that she'd
17 had with the decedent?

18 A. No.

19 Q. During your conversation, did Dr. Chen tell you
20 or represent to you in any way that the decedent had a
21 history of depression?

22 A. No.

23 Q. I'm going to show you another document.

24 MR. LASKA: Counsel, this is SLIC 0067 and
25 0068. It's the death certificate.

1 BY MR. LASKA:

2 Q. Deputy, let me know if you recognize this
3 document. It's not a very good copy.

4 A. Yes. It's a death certificate for Diane
5 Geraldine Hussain.

6 Q. Did you complete this death certificate?

7 A. Yes.

8 Q. Correction. It appears that coroner Frank Jager
9 actually signed the death certificate. There's two
10 pages to this document. The first page says at the top,
11 "Certificate of Death"?

12 A. Yes.

13 Q. And at the bottom that document purports to be
14 signed by Coroner Jager?

15 A. Correct.

16 Q. And in the middle of that death certificate it
17 reads, "Pending investigation"; is that correct?

18 A. Yes.

19 Q. And if you look at the version that I gave you,
20 in handwriting in the middle of the page it says 1 of 2,
21 which I assume is meant to indicate that it's continued
22 on the second page?

23 A. Yes.

24 Q. If you turn the page at the top it says,
25 "Amendment of medical and health data, hyphen, death."

1 generally within the Eureka Arcata area?

2 A. I believe so.

3 Q. You don't know for certain?

4 A. No.

5 Q. Were you able to determine the exact date of
6 Ms. Hall-Hussain's death?

7 A. No.

8 Q. Do you believe that it is possible that she could
9 have died days before her body was found?

10 A. No, not days. I believe hours. That was my
11 speculation, that it was probably sometime before she
12 went to bed the previous night.

13 Q. What did you base that impression upon?

14 A. The condition of the body. The body was still
15 warm to the touch where it made contact with the bed.
16 The body cools at about a degree and a half per hour.
17 Also lividity was proper for position; did not blanch,
18 so that means she'd probably been dead longer than seven
19 or eight hours. And then rigor was firm in the
20 extremities but was easily broken. So those are all
21 factors we look at as far as time of death. But it was
22 hours, not days. I believe it was the night before.

23 Q. The night before, you believe?

24 A. Yes.

25 Q. What effect, if any, does that have on the

1 higher range of potentially toxic. We'll see those
2 ranges three to four times higher.

3 Q. In this particular case there is no range for
4 potentially toxic. It just has a number of .2
5 milligrams?

6 A. Yes. That's the reference given by the lab.

7 Q. Okay. So, again, carrying through this thought
8 process, it was consistent, if you were thinking that
9 this was a suicide, you would expect to see what kind of
10 a level of oxycodone --

11 What would you expect to have found as to the
12 toxic level of Ms. Hall-Hussain's blood system of
13 oxycodone if you were suspecting this was a suicide?

14 MR. LASKA: Object. It calls for
15 speculation. It's an improper hypothetical.

16 You can answer the question.

17 THE WITNESS: On Ms. Hall-Hussain's level it
18 was .2 milligrams per liter. Oh, that's potentially
19 toxic. Hers was .25. Excuse me.

20 BY MR. STENNETT:

21 Q. If it was atypical what you found to be a
22 suicidal attempt or actually suicide, what is the range
23 that you would expect to find?

24 A. Typically what we find is that the number would
25 be more like 1.2 to 3.2. So you'd be over another

1 decimal point into the 1.2 -- 2.2, 3.2.

2 Q. Okay. So that was one of the factors that you
3 took into account in considering that this is an
4 accidental overdose as opposed to a suicidal overdose;
5 is that correct?

6 A. That's correct.

7 Q. The other factors you indicated I think was there
8 was no suicide note?

9 A. Correct.

10 Q. Is that something that you typically in your
11 experience find when you conclude there's a suicide?

12 A. I would say probably we find a note 50 percent of
13 the time.

14 Q. Then the other factor you considered was with
15 family members, correct?

16 A. Yes.

17 Q. There had been no discussion with family members,
18 she appeared to enjoy her family, enjoy her life.

19 A. Correct.

20 Q. Now, was this amount of oxycodone in her system,
21 .25, would you describe that as being the high end of
22 potentially toxic level or the low end of potentially
23 toxic level?

24 A. The low end.

25 Q. Would the number of hours that you indicated was

1 the probable time of death, hours before you found her
2 on April 9th, the morning of April 9th, would you expect
3 any substantial change during that period of time in her
4 blood level?

5 A. Drugs have half-lives, and some drugs have --
6 there's a whole different science on half-lives of
7 drugs. Certain drugs have -- let's use a four hour
8 half-life. So after four hours, that drug will be half
9 effectiveness.

10 Q. I understand that, Deputy. That's when somebody
11 is alive and metabolizing the drugs in their system.

12 A. Correct.

13 Q. What about after death; what's the opinion, as
14 you understand it, with regard to the diminution of the
15 blood levels of drugs?

16 A. That's a debatable subject, and toxicologists
17 debate that subject. But I'm not a toxicologist. I'm
18 not sure what the levels would be postmortem.

19 Q. Okay. Did you make an assumption at all in your
20 findings here?

21 A. No. I don't assume on those. I just go by --
22 you know, the black and white of the report.

23 Q. Okay. Do you have any idea based on the
24 prescription amount contained in your report -- no, let
25 me back up. You didn't have a prescription amount. Oh,

1 yeah, on the bottle. Based on the prescription amount
2 on the bottle, would you be able to tell us what you
3 would expect to find in Ms. Hall-Hussain's blood of the
4 oxycodone?

5 A. No.

6 Q. Now, looking at the death certificate, is it my
7 understanding that you consulted with coroner Horton on
8 this matter?

9 A. Coroner Jager.

10 Q. I'm sorry. Coroner Jager. I'm looking at the
11 wrong line.

12 A. Yeah, coroner Jager.

13 Q. You consulted with him in filling out the death
14 certificate?

15 A. Not in filling out the death certificate. We --

16 Q. In coming to a conclusion as to the cause of
17 death, then?

18 A. Correct.

19 Q. And so the two of you agreed that the cause of
20 death was oxycodone intoxication?

21 A. Yes.

22 Q. Based on your investigation and the findings of
23 the labs?

24 A. Yes.

25 Q. And discussions with family members and the

1 questions.

2 Anything else, Counsel?

3 MR. STENNETT: No, nothing here. Thank you.

4 MR. LASKA: Can we just incorporate the same
5 stipulation from the last deposition?

6 MR. STENNETT: That's fine.

7 (The deposition was concluded at 12:45 p.m.)

8

9

10

11 I hereby certify under penalty of perjury that the
12 foregoing is true and correct.

13 Executed this ____ day of _____, 2008,

14 at _____.

15

16 _____

17 ROY HORTON

18

19

20

21

22

23

24

25

1 STATE OF CALIFORNIA)
) ss.
2 COUNTY OF HUMBOLDT)

3 I, Valerie Walker, CSR No. 7209, a Certified
4 Shorthand Reporter of the State of California, hereby
5 certify that the witness in the foregoing deposition was
6 by me duly sworn to testify to the truth, the whole
7 truth and nothing but the truth in the within-entitled
8 cause; that said deposition was taken at the time and
9 place therein stated; that the testimony of the said
10 witness was reported by me and was thereafter
11 transcribed under my direction into typewriting; that
12 the foregoing is a full, complete and true record of
13 said testimony; and that the witness was given an
14 opportunity to read and correct said deposition and to
15 subscribe the same. Should the signature of the witness
16 not be affixed to the deposition, the witness shall not
17 have availed himself of the opportunity to sign or the
18 signature has been waived.

19 I further certify that I am not of counsel or
20 attorney for either or any of the parties in the
21 foregoing deposition and caption named, or in any way
22 interested in the outcome of the cause named in said
23 caption.

24 Valerie Walker
25 Certified Shorthand Reporter